

### **DETAILED ACTION**

Applicant's request for reconsideration of the Office Action dated 2/19/09 by phone on July 19, 09 due to not addressing claim 12 is found persuasive and, therefore, the following replaces the previous Final Office Action.

### ***Election/Restrictions***

Newly submitted claim 12 is directed to an invention that is independent or distinct from the invention originally claimed for the following reasons:

The core structures of the species of claim 12 are distinct from the other species of the independent claim.

Since applicant has received an action on the merits for the originally presented invention, this species election has been constructively elected by original presentation for prosecution on the merits. Accordingly, **claim 12** is withdrawn from consideration as being directed to a non-elected species. See 37 CFR 1.142(b) and MPEP § 821.03.

### ***Claim Rejections - 35 USC § 103***

**Claims 1-6 and 8-11** stand rejected under 35 U.S.C. 103(a) as being unpatentable over teachings of Watanabe et al (WO 01/02378, see IDS dated 03/09/07) in view of Cullen et al (US 4,748,186, see 892 dated 6/16/08), and Assmann et al (US 6,277,791, see 892 dated 6/16/08).

Applicants assert claim 1 has been amended to require a synergistic result of the composition and the prior art has no showing of such synergism.

Watanabe et al specifically teaches that the active compound may be used in a mixture for the purpose of widening the activity spectrum and preventing the development of resistance. Where, such properties are sought, a synergistic effect would be obvious, as also suggested (page 8 lines 23-28), given the ability of the combinations to attack pests through a wider spectrum of activity. Further, Assmann et al supports this assertion by teaching the addition of compounds to pesticides are known to have synergistic effects. The synergistic effect instantly claimed is not an unexpected result, given the teachings of the prior art.

Applicant's assertion of nearly infinite possible combinations is unfounded where the active pesticide is the main compound taught in Watanabe et al. The selection would then only be the selection of the second agent. Thus the combination is not overly burdensome and the testing would simply require mixing the various compounds and testing with an expectation of success.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

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mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Benjamin Packard whose telephone number is 571-270-3440. The examiner can normally be reached on M-R 8-5 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Frederick Krass can be reached on 571-272-0580. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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Examiner, Art Unit 1612

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